

## **IC 8-23-9**

### **Chapter 9. State Highway Contracts; General Powers**

## **IC 8-23-9-1**

### **Opening of sealed bids**

Sec. 1. On the date and at the time and place named in the notice, the commissioner shall receive all sealed proposals submitted and shall publicly open the bids. The bids may be opened at any other public place that the commissioner may designate on the day the bids are to be opened.

*As added by P.L.18-1990, SEC.218.*

## **IC 8-23-9-2**

### **Rejection of proposals**

Sec. 2. The commissioner may reject any and all proposals for cause.

*As added by P.L.18-1990, SEC.218.*

## **IC 8-23-9-3**

### **Lowest and best bidder; letting of contract; determination**

Sec. 3. Except as provided in sections 4 and 4.5 of this chapter, the commissioner shall let the contract for the construction, improvement, or maintenance of the road to the lowest and best bidder. The determination of the lowest and best bidder must include any requirement imposed under section 13 of this chapter. The lowest and best bid may not be for a greater sum than the estimated cost of the project.

*As added by P.L.18-1990, SEC.218. Amended by P.L.89-1991, SEC.1.*

## **IC 8-23-9-4**

### **Acceptance of proposals; criteria**

Sec. 4. The department may accept a proposal and award a contract for the construction, improvement, or maintenance of a road if:

- (1) the bids are not more than five percent (5%) above the estimated cost of the project;
- (2) the commissioner believes that awarding a contract under this section is in the best interests of the state; and
- (3) the award would comply with any requirement imposed under section 13 of this chapter.

*As added by P.L.18-1990, SEC.218.*

## **IC 8-23-9-4.5**

### **Qualified work release programs; highway right-of-way maintenance; exception to competitive bid requirements**

Sec. 4.5. (a) As used in this section, "qualified work release program" refers to:

- (1) a work release program that is established by the department of correction under IC 11-10-8 or IC 11-10-10; or

(2) a county work release program under IC 11-12-5.

(b) Notwithstanding IC 8-23-10, the commissioner may contract with a qualified work release program for the maintenance of a highway right-of-way without taking competitive bids. As used in this subsection, "highway right-of-way" includes only the grass plats. *As added by P.L.89-1991, SEC.2.*

#### **IC 8-23-9-5**

##### **Construction and maintenance when no satisfactory proposal received**

Sec. 5. If, in the opinion of the commissioner, no satisfactory proposal has been received, the commissioner may do the following:

- (1) Purchase the necessary material and equipment.
- (2) Employ the necessary labor.
- (3) Perform the work of constructing, improving, or maintaining the highway or highways.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-6**

##### **Spending limit when no satisfactory proposal received**

Sec. 6. The commissioner may not expend more than eighty-five percent (85%) of the amount of the lowest and best proposal submitted for the kind of improvement proposed to be made when acting under section 5 of this chapter.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-7**

##### **Adoption of rules governing purchases of material and equipment**

Sec. 7. The department shall adopt rules governing the purchase of material and equipment to the extent that complete competition is ensured.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-8**

##### **Bid guarantee and performance bond requirements**

Sec. 8. Each bidder must submit a bid guarantee and a performance bond payable to the state with the bidder's proposal. On contracts of one hundred thousand dollars (\$100,000) or less the commissioner may waive the bond requirements. Instead of the bond, the department may establish by rule the requirements that, in its discretion, are necessary to assure payment of subcontractors, suppliers, and employees by the contractor.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-9**

##### **Bid guarantee and performance bond amounts**

Sec. 9. The bid guarantee must be in the penal sum of an amount equal to five percent (5%) of the bid price. The performance bond must be in a penal sum set by the commissioner, but may not be less than an amount equal to the bidder's proposal or the contract price,

where the bidder's proposal is accepted, with good and sufficient sureties, to the approval of the commissioner, conditioned upon the faithful performance of the work, in accordance with the profile, plans, and specifications set forth in the proposal, and conditioned also upon the payment by the contractor and by all subcontractors for all labor performed or materials furnished or other services rendered in the construction of the highway.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-10**

##### **Performance bonds; deposit; reinsurance; statements of amounts due**

Sec. 10. The bond shall be deposited with and held by the commissioner for the use of any party interested in the bond. The commissioner may require the reinsurance of any bond in the amount, upon the terms, and with the surety approved by the commissioner. A person, firm, limited liability company, or corporation to whom any money is due for having performed labor or furnished material or any other services rendered in the construction, improvement, or maintenance of the highways shall, within one (1) year after the acceptance of the labor, material, or services by the commissioner, furnish the sureties on the bond a statement of the amount due to any person, firm, limited liability company, or corporation.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.154.*

#### **IC 8-23-9-11**

##### **Actions on performance bonds**

Sec. 11. Suit may not be brought against the sureties on a bond until the expiration of sixty (60) days after the furnishing of a statement under section 10 of this chapter. If the indebtedness is not paid in full at the expiration of a period of sixty (60) days, the person, firm, limited liability company, or corporation may bring an action in the person's, firm's, limited liability company's, or corporation's own name upon the bond. The action must be commenced within eighteen (18) months from the date of the final acceptance of the highway or improvement.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.155.*

#### **IC 8-23-9-12**

##### **Performance bond form**

Sec. 12. The bond provided in this section must be in substantially the following form:

"KNOW ALL PERSONS BY THESE PRESENTS, THAT \_\_\_\_\_ as principal and \_\_\_\_\_ as surety, are firmly bound unto the state of Indiana in the penal sum of an amount equal to \_\_\_\_ percent of the principal's bid or the contract price, if the proposal is accepted for the payment of which, well and

truly to be made, we bind ourselves, jointly and severally, and our joint and several heirs, executors, administrators, and assigns, firmly by these presents, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

"THE CONDITIONS OF THE ABOVE OBLIGATIONS ARE SUCH That, Whereas, the principal is herewith submitting a bid and proposal for the erection, construction, and completion of \_\_\_\_\_ in accordance with the plans and specifications approved and adopted by the department, which are made a part of this bond:

"NOW, THEREFORE, if the department shall award the principal the contract for work and the principal shall promptly enter into a contract with the department in the name of the state of Indiana for the work and shall well and faithfully do and perform the same in all respects according to the plans and specifications adopted by the department, and according to the time, terms, and conditions specified in the contract to be entered into, and in accordance with all requirements of law, and shall promptly pay all debts incurred by the principal or any subcontractor in the construction of the work, including labor, service, and materials furnished, then this obligation shall be void; otherwise to remain in full force, virtue, and effect.

"IT IS AGREED that no modifications, omissions, or additions in or to the terms of such contract or in or to the plans or specifications therefor shall in any wise affect the obligation of such sureties on its bond.

"IN WITNESS WHEREOF, we hereunto set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 19\_\_."

*As added by P.L.18-1990, SEC.218.*

### **IC 8-23-9-13**

#### **Trust bids**

Sec. 13. (a) This section applies whenever a contract is awarded under this chapter by acceptance of bids, proposals, or quotations.

(b) A bid, proposal, or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

- (1) beneficiary of the trust; and
- (2) settlor empowered to revoke or modify the trust.

*As added by P.L.18-1990, SEC.218.*

### **IC 8-23-9-14**

#### **Partial payments; authorization**

Sec. 14. The department may authorize partial payments to any contractor performing any work under this chapter as the work progresses under the general rules of the department.

*As added by P.L.18-1990, SEC.218.*

### **IC 8-23-9-15 Repealed**

*(Repealed by P.L.267-2001, SEC.2.)*

### **IC 8-23-9-16**

#### **Acceptance of completed work; relief of contractor's liability**

Sec. 16. (a) After complete inspection has been made and it is determined that the work has been done according to plans and specifications, the commissioner of the department may approve and accept completed work in sections of not less than one (1) mile unless otherwise permitted by the contract documents.

(b) When a section of the work has been completed and accepted, the contractor is as fully relieved of all liability for the maintenance, reconstruction, or restoration of the section of the work completed and accepted, or a part of the work, as the contractor would be if the entire contract were finally completed and accepted.

(c) If the contract consists of two (2) or more projects as defined by the department, the commissioner may approve and accept the work of a completed project, and the contractor is relieved of all liability for maintenance, reconstruction, or restoration of the project, or a part of the project, as the contractor would be if the entire contract were finally completed and accepted.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-17**

##### **Withdrawal and payment of retained percentages**

Sec. 17. At any time after the contract has been substantially completed, the contractor may be permitted to draw any part of the retained percentage withheld by the department in an amount determined by the department to be in the best interest of the state, provided the contractor files a written request on forms provided by the department for requests. The department may pay to the contractor any part of the retained percentage the department determines is in the best interest of the state even though the contractor does not request payment, provided that the department notifies the contractor of the department's intent to do so at least thirty (30) days in advance of the payment. The fact that the contractor is permitted to withdraw a part of the retained percentage, or that the department pays a part of the retained percentage, shall in no way release or relieve the contractor on the contract.

*As added by P.L.18-1990, SEC.218. Amended by P.L.117-1995, SEC.3; P.L.267-2001, SEC.1.*

#### **IC 8-23-9-18**

##### **Final payments; disputes**

Sec. 18. (a) Each contract entered into under this chapter must provide for final payment within one hundred eighty (180) days after final acceptance of the contract. However, final payment may not be made on any amount that is in dispute or the subject of a pending claim, but final payment may be made on that part of a contract or those amounts that are not in dispute or the subject of a pending claim. Partial payment does not constitute a bar, an admission, or estoppel or have any other effect as to those payments in dispute or the subject of a pending claim.

(b) For the purpose of this section, a dispute exists when the contractor makes any claim for increase or decrease to any part of the

contract or seeks additional compensation for any reason.  
*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-19**

##### **Repealed**

*(Repealed by P.L.267-2001, SEC.2.)*

#### **IC 8-23-9-20**

##### **Repealed**

*(Repealed by P.L.267-2001, SEC.2.)*

#### **IC 8-23-9-21**

##### **Contract form; approval**

Sec. 21. Every contract for highway work authorized to be made under this chapter shall be made in the name of the state, signed by the commissioner and the contracting parties, and acknowledged before an officer authorized by law to administer oaths. The contract shall be submitted to and approved by the attorney general with regard to legality and form.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-22**

##### **Hourly wage rates**

Sec. 22. A bid submitted for the construction or betterment of a state highway must contain a statement stipulating the hourly rate for laborers. The hourly rate may not be lower than the hourly rate paid for common labor by the department. The hourly rate in the bid becomes a part of the contract.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-23**

##### **Residency requirement for unskilled laborers**

Sec. 23. It must be a condition of every contract let by the department for the construction of a state highway or bridge that all unskilled laborers employed on the work be residents of the county or counties in which the highway or bridge is being constructed if the labor is available. The department may designate the class of labor that is unskilled. However, if this subsection is in violation of a regulation of a federal authority, the provision may be eliminated from a contract that is payable in whole or in part with federal funds.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-24**

##### **Survey monuments; procedure upon removal or burial**

Sec. 24. If in the construction or maintenance of a state highway it is necessary to remove or bury a monument marking or evidencing an established corner, the department shall cause to be set in the pavement or right-of-way at the place where the monument was located a monument capable of activating a metal detection device. The top of the monument must be level with the pavement or the

grade of the right-of-way. The department shall cause a memorandum of the monument to be filed in the county surveyor's office of the county.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-25**

##### **Nonperformance or abandonment of contracts; completion of work; costs and expenses**

Sec. 25. Any time a contractor:

- (1) fails to commence or carry forward;
- (2) improperly performs;
- (3) has abandoned; or
- (4) fails or refuses to complete;

a contract executed under this chapter, the commissioner may relet the work or may complete the work. The commissioner shall deduct the cost and expense from any money that may be due the contractor, and if there is not sufficient money due the contractor to pay for the work, the commissioner shall require the bondsmen to pay for it. The attorney general shall prosecute suit in the name of the state for the collection of the payment under this section.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-26**

##### **Claims against contractors; filing with department**

Sec. 26. A person, firm, limited liability company, or corporation to whom any money is owed for having performed labor or furnished material or other service in the construction of a highway or bridge in the state highway system or in the construction or repair of a building or other structure for the department, whether the work was performed for a contractor or subcontractor, may at any time within sixty (60) days of the performance of the last of the labor or the furnishing of the last of the material or other service and within thirty (30) days after the final acceptance of the improvement, file with the department a duly verified itemized statement of the amount due the person, firm, limited liability company, or corporation, stating whether the labor or material was performed for or furnished to a contractor or subcontractor, giving the name of the contractor or subcontractor and the dates the labor or material was performed or furnished, the rate or cost, the character of the labor, material, or service, and the post office address of the claimant.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.156.*

#### **IC 8-23-9-27**

##### **Claims against contractors; mailing of copies**

Sec. 27. A claim under section 26 of this chapter must be filed in triplicate, and the department shall send a copy by certified mail to the contractor and to the surety on the bond of the contractor. The failure to mail copies to the contractor and surety does not affect the validity of a claim.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-28**

##### **Claims against contractors; retaining amount of claim**

Sec. 28. Upon the receipt of a claim under section 26 of this chapter, the department shall retain out of the amount due the contractor the amount of the claim.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-29**

##### **Claims against contractors; allowance or rejection**

Sec. 29. Within twenty (20) days of the receipt of a copy under section 27 of this chapter, the contractor shall either allow or reject the claim. The contractor shall notify the department in writing of the allowance or rejection.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-30**

##### **Claims against contractors; notice of rejection; commencement of actions**

Sec. 30. If a claim is rejected in whole or in part, the department shall immediately notify the claimant of the action by certified mail. Within ninety (90) days after receiving notice of a rejection the claimant must commence an action against the contractor or the surety on the bond in a court of competent jurisdiction to recover the amount of the claim. Upon the filing of an action, the claimant shall procure a certificate from the clerk of the court under the seal of office that the action has been filed and listing the date of filing and the parties. The claimant shall promptly forward the certificate to the department.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-31**

##### **Claims against contractors; payment of amount adjudged due**

Sec. 31. If an action is filed and the department notified under section 30 of this chapter, the department shall continue to hold the amount until the final determination of the action. If it is adjudged that the amount or a part is due to the claimant, the department shall pay the amount adjudged due to the claimant to the clerk of the court rendering the judgment.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-32**

##### **Claims against contractors; failure to file certificate**

Sec. 32. If within ninety (90) days after the date of notice of rejection under section 29 of this chapter a claimant fails to file with the department a certificate of a clerk, the department shall pay the amount held on the claim to the contractor if otherwise entitled to receive the amount.

*As added by P.L.18-1990, SEC.218.*



**IC 8-23-9-33****Claims against contractors; additional remedy**

Sec. 33. In addition to the remedy given in sections 26 through 31 of this chapter, a person, firm, limited liability company, or corporation may proceed against a contractor and surety as provided by section 10 of this chapter.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.157.*

**IC 8-23-9-34****Claims against contractors; filing of actions**

Sec. 34. Whenever a claim has been filed under this chapter with the department by a person, firm, limited liability company, or corporation who has performed labor or furnished material or other service in the construction, repair, or maintenance of a highway or bridge in the state highway system, or in the construction, repair, or renovation of a building or structure used by the department, and against a contractor with the department, the department shall notify the person, firm, limited liability company, or corporation filing the claim that within ninety (90) days after the date of the notice the person, firm, limited liability company, or corporation must proceed by an action at law in a court of competent jurisdiction against the contractor or the surety on the contract bond of the contractor for the collection of the amount of the claim.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.158.*

**IC 8-23-9-35****Claims against contractors; mailing or publication of notice**

Sec. 35. Notice under section 34 of this chapter shall be mailed to the person, firm, limited liability company, or corporation by certified mail to the last known address. If the address of the person, firm, limited liability company, or corporation is unknown, the notice shall be given by publication once each week for two (2) successive weeks in two (2) newspapers of general circulation published in the county or counties where the contract with the department was performed. In a notice given by publication, the names of all persons, firms, limited liability companies, or corporations who have filed claims against the contractor and who have not been notified by mail may be included. Notice under this section must state that action must be filed on the claim within ninety (90) days of the date of the notice.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.159.*

**IC 8-23-9-36****Claims against contractors; certificates of filing of actions**

Sec. 36. Upon the filing of an action under section 34 of this chapter, the person, firm, limited liability company, or corporation filing the action shall procure from the clerk of the court where filed

a certificate under the seal of the court that an action has been filed with the date of filing and the names of the parties. The certificate shall be within five (5) days after the date of filing the action forwarded by the person, firm, limited liability company, or corporation to the department.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.160.*

#### **IC 8-23-9-37**

##### **Claims against contractors; retention of security for protection of claimant**

Sec. 37. Upon the filing of an action and the receipt of a certificate under section 36 of this chapter, the department shall hold the money, security, or other thing held by the department for the protection of the claim, until the final determination of the action. If it is adjudged that a part of the claim is due to the person, firm, limited liability company, or corporation, the department shall pay to the clerk of the court rendering judgment out of the cash retained for the claimant the amount retained by the department for the purpose. If the department retained for the protection of the claimant a check, bond, or security other than cash, the department shall notify the claimant of the fact. The claimant shall be subrogated to the rights of the department in the check, bond, or security other than cash, to the amount of the judgment, which rights the claimant may enforce in an appropriate action.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.161.*

#### **IC 8-23-9-38**

##### **Claims against contractors; failure to file action and certificate**

Sec. 38. If a claimant does not file an action under section 36 of this chapter within the time specified in the notice or fails to file with the department the certificate of the clerk, the department shall pay the amount held by the department on the claim to the contractor. If the claim has been protected by check, bond, or security, the check, bond, or security shall be delivered to the contractor. If the check, bond, or security has been deposited for the protection of two (2) or more claimants, the check, bond, or other security shall be held by the department for the protection of all claimants until all are either released, waived, or satisfied.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-39**

##### **Claims against contractors; additional proceedings**

Sec. 39. Sections 34 through 38 of this chapter do not limit or abridge the right of a person, firm, limited liability company, or corporation to proceed against a contractor and surety as provided by section 10 of this chapter.

*As added by P.L.18-1990, SEC.218. Amended by P.L.8-1993, SEC.162.*

**IC 8-23-9-40****Railroad crossings; separation of grades**

Sec. 40. Whenever a state highway is being constructed or reconstructed and the highway crosses or intersects a railroad, the department may, if in its opinion it is practicable, separate grades at the crossings. If the department is unable to agree with the railroad as to the separation and the method of accomplishing the separation, the department shall apply to the utility regulatory commission by verified petition asking that the grades be separated at the crossing.  
*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-41****Railroad crossings; separation of grades; rights, powers, and duties of parties involved**

Sec. 41. Upon the filing of a petition under section 40 of this chapter, the utility regulatory commission has and shall exercise all of the powers and authority conferred upon it by IC 8-6-1. A railroad, interurban street railroad, or suburban street railroad whose tracks are involved in a crossing has all the rights conferred by and is subject to all the duties imposed by IC 8-6-1.  
*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-42****Railroad crossings; separation of grades; payment of costs**

Sec. 42. When any separation of grades is made by agreement or by order, the department shall pay one-half (1/2) of the total expense of a separation as a part of the cost of the highway, and the railroad whose tracks are involved in the separation shall pay the other one-half (1/2) of the total expense.  
*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-43****Railroad crossings; separation of grades; multiple railroads; payment of costs**

Sec. 43. If two (2) or more railroads, interurban street railroads, or suburban street railroads are located in proximity to each other as to be involved in a single separation of grades, the utility regulatory commission shall pay the half of the cost not paid by the department, apportioned between the railroads, interurban street railroads, or suburban street railroads in proportion as the cost of the separation has been enhanced by the presence of the respective railroads, interurban street railroads, or suburban street railroads.  
*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-44****Railroad crossings; separation of grades; maintenance**

Sec. 44. After the construction of a separation, the department shall maintain the highway and the structures supporting it and the railroad shall maintain its roadway and track and the structures supporting the same.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-45**

##### **Railroad crossings; improvement and maintenance**

Sec. 45. Where the track or tracks of any steam, electric, interurban, or street railroad company occupies any part of a highway that is ordered improved and maintained by the department under this chapter, the railroad company shall improve and maintain, or pay for the cost of improving that part of the highway occupied by its tracks, including the space between the rails, the space between the tracks, if there is more than one (1) track, and the space eighteen (18) inches in width on the outside of the rails. In all cases where practicable, improvement to the full width shall be constructed outside the area occupied by the tracks, and, where not practicable to do so, the department may require the tracks to be removed to that part of the highway outside the area to be so improved.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-46**

##### **Railroad crossings; width of improvements**

Sec. 46. Whenever a highway improvement under section 45 of this chapter is made so as to embrace within its limits the tracks of a railroad, interurban, suburban, or street railroad, the improvement shall be made of sufficient width to give as much room for general travel on the side or sides and outside of the tracks as is given in places where there are no tracks within the improvement.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-47**

##### **Railroad crossings; election by railroad companies to make or pay for improvements**

Sec. 47. A railroad company may elect, by written notice filed with the department, not less than twenty (20) days before the date on which the contract for the improvement of a highway is to be let, to improve the part of the highway occupied by its tracks or to pay for the improvement done by the department. If the railroad company elects to improve the part of the highway occupied by its tracks, the company shall perform the work of improving the part of the highway with material and in a manner and according to plans and specifications that the department prescribes and shall commence, proceed with, and complete the work within a time to be fixed by the department. If the railroad company fails to do so, the company is subject to a fine of not to exceed fifty dollars (\$50) per day for each and every day that the improvement is not commenced or completed after the date named by the department. If the railroad company elects to pay for the improvement as done by the department, any sums assessed to cover the cost of the improvement, together with all the cost in collecting the costs, including attorney's fees, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of filing a statement of the assessment,

attested by the department, in the office of the county recorder of the county in which the improvement was made, constitute a lien, to which only the lien of the state for state, county, township, and school taxes is paramount.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-48**

##### **Tearing up and disturbing highways; permit; unauthorized signs and markers; violations**

Sec. 48. (a) A state highway may not be torn up or otherwise disturbed for any purpose without the written permit of the commissioner and then only in accordance with the regulations prescribed by the commissioner. All work shall be done under the department's supervision, and all the cost of replacing the highway in as good condition as before the highway was disturbed, shall be paid by the person to whom or in whose behalf the permit was given. The department shall mark with proper markers, showing the number of the highway, all state highways, including the routes of the highways through cities and towns, together with the caution and direction signs that the department considers advisable.

(b) It is a Class C infraction for a person to put, place, or maintain within twenty (20) feet of the right-of-way limits of a state highway, outside the limits of a city or town a sign or other device containing the words "stop", "caution", "slow", or any other word or device that also might be construed as a warning to persons using the highway.

(c) It is a Class C infraction for a person to construct or maintain a sign or advertising device within one hundred (100) feet of the right-of-way of such a highway that obstructs the view of the highway of a person traveling the highway for a distance of five hundred (500) feet or less from the sign or device as the person approaches the sign or device. The department may remove unlawful signs, markers, and devices.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-49**

##### **Approaches and drainage structures; construction; private facilities**

Sec. 49. The construction of public road approaches, drainage structures for the reconstruction of definitely existing private entrances, and the drainage necessary for the protection of a state highway shall be included as a part of the improvement of the highway. Upon the completion of the highway, the owners or occupants of adjoining lands shall construct and keep in repair all private approaches or driveways from the highways, but no approaches or driveways shall be constructed in a manner as to obstruct or interfere with the highways or with a drain or ditch that has been constructed as a part of the highway.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-50**

**Use of prison labor in preparation and manufacturing of road materials**

Sec. 50. The department, with the approval of the governor, may enter into an agreement with the authorities of any of the penal institutions of the state, county, or city for the use of prison labor in the preparation and manufacturing of road materials.

*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-51**

**Drains, culverts, and bridges; bridge construction contracts**

Sec. 51. All drains, culverts, and bridges on any state highways shall be considered as part of the state highway. All bridges having a span over twenty (20) feet in length may be let as a separate contract, the procedure to be the same as in the letting of contracts for state highways.

*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-52**

**Contracts specifying borrow or clearing and grubbing; standards**

Sec. 52. (a) A department contract that specifies borrow or clearing and grubbing must require the contractor to conform to the department's manual of standard specifications and must include standards for the following:

- (1) Borrow pit back-slopes.
- (2) Control of drainage water.
- (3) Degree of restoration.

(b) Restoration of borrow areas and disposal areas must meet or exceed the standards for seeding and sodding of roadside areas.

(c) Final cleanup provisions of the contract apply to the removal and disposal of perishable materials and debris from the highway right-of-way to an off-road site.

*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-53**

**Trench safety systems; costs**

Sec. 53. (a) This section applies to a construction, an improvement, or a maintenance project that requires creation of a trench of at least five (5) feet in depth.

(b) OSHA regulations, 29 C.F.R. 1926, Subpart P, for trench safety systems shall be incorporated into the contract documents for a public works project.

(c) The contract documents for a public works project must provide that the cost for trench safety systems shall be paid for:

- (1) as a separate pay item; or
- (2) in the pay item of the principal work with which the safety systems are associated.

*As added by P.L.18-1990, SEC.218.*

**IC 8-23-9-54**

**State highway fund; creation and management**

Sec. 54. (a) To provide funds for carrying out the provisions of this chapter, there is created a state highway fund from the following sources:

- (1) All money in the general fund to the credit of the state highway account.
- (2) All money that is received from the Department of Transportation or other federal agency and known as federal aid.
- (3) All money paid into the state treasury to reimburse the state for money paid out of the state highway fund.
- (4) All money provided by Indiana law for the construction, maintenance, reconstruction, repair, and control of public highways, as provided under this chapter.
- (5) All money that on May 22, 1933, was to be paid into the state highway fund under contemplation of any statute in force as of May 22, 1933.
- (6) All money that may at any time be appropriated from the state treasury.
- (7) Any part of the state highway fund unexpended at the expiration of any fiscal year, which shall remain in the fund and be available for the succeeding years.
- (8) Any money credited to the state highway fund from the motor vehicle highway account under IC 8-14-1-3(4).
- (9) Any money credited to the state highway fund from the highway road and street fund under IC 8-14-2-3.
- (10) Any money credited to the state highway fund under IC 6-6-1.1-801.5, IC 6-6-4.1-5, or IC 8-16-1-17.1.

(b) All expenses incurred in carrying out this chapter shall be paid out of the state highway fund.

*As added by P.L.18-1990, SEC.218. Amended by P.L.192-2002(ss), SEC.150.*

#### **IC 8-23-9-55**

##### **Use of state highway fund**

Sec. 55. Money in the state highway fund shall be used for the following:

- (1) Operation of the department.
- (2) Construction, reconstruction, operation, maintenance, and control of the state highways that are the responsibility of the department and of tollways that are the responsibility of the department under IC 8-15-3.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-56**

##### **Research assistance to Purdue University**

Sec. 56. (a) The department may cooperate with and assist Purdue University in developing the best methods of improving and maintaining the highways of the state and the respective counties. In so cooperating with Purdue University and for the purpose of developing and disseminating helpful information concerning road

construction and improvement and the operation of the highways of the state and the counties, the department may expend money annually from the funds appropriated to the department's use for the use and benefit of Purdue University in carrying on programs of highway research and highway extension at or in connection with Purdue University and for the annual road school held at Purdue University. In addition, the money may be increased by federal funds, which may be made available to the department for the engineering and economic investigation of projects for future construction and for highway research necessary in connection therewith.

(b) For the purpose of disseminating knowledge of the highway maintenance methods that are best suited to the various sections of Indiana, the county and state highway officials, in cooperation with Purdue University, may hold joint road meetings in the various sections of Indiana.

(c) The aid authorized by this section shall be paid quarterly by the department to Purdue University upon proper voucher.

*As added by P.L.18-1990, SEC.218.*

#### **IC 8-23-9-57**

##### **Cooperation with federal and other states' officials**

Sec. 57. The department may cooperate with the governing officials of state highway agencies and systems in one (1) or more other states or the Federal Highway Administration in research in conducting tests and experiments designed to develop the best methods of constructing, improving, and maintaining the highways in Indiana. In so cooperating with the governing officials of state highway agencies and systems in one (1) or more other states or the Federal Highway Administration and for the purpose of paying the proportionate share of this state of the cost of the tests and experiments, the department may expend the funds appropriated to its use.

*As added by P.L.18-1990, SEC.218.*